IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

CRP.No. 447 of 2006()

AGAINST THE ORDER DATED 16/06/2006 IN IA 5203/05, IN OS.2041/2002 of II ADDL.M.C., ERNAKULAM

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REVN. PETITIONER:

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1. MULANTHURUTHY CHITTY REP. BY ITS MANAGING PARTNER T.T.MATHAI, (DIED), THARAYIL HOUSE, AMBALLUR VILLAGE, ERNAKULAM.

2. GEORGE JOSEPH, S/O.M.N.JOSEPH, MANIKANAMPARAMBIL HOUSE, NADAKKAVU, UDAYAMPEROOR, ERNAKULAM.

BY ADV. SRI.P.P.JACOB

RESPONDENTS: DEFENDANTS

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1. K.P.VARGHESE, S/O.POULOSE, KOOMULLIL HOUSE, THALACODE, MULAMTHURUTHY.

2. SALY VARGHESE, W/O.K.P.VARGHESE, DO.

3. P.A.VIJAYAKUMAR, KRISHNAVILASAM, MULAMTHURUTHY.

R1 BY ADV. SRI.JOSEPH GEORGE
R3 BY ADV SRI.A.BALAGOPALAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 27/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J.

C.R.P.No. 447 OF 2006 E

Dated this the 27th July, 2007.

O R D E R

This civil revision petition is preferred against the order of the learned Munsiff, Ernakulam in I.A. 5203/05 in O.S.2041/02. The brief facts necessary for the disposal of the revision petition are stated as follows. The Mulanthuruthy Chitty was constituted by a partnership firm consisting of two members. One of the members who was the Managing Partner instituted a suit for realisation of the amount due from the defendants. During the pendency of the case the Managing Partner died and thereafter the other partner moved an application for impleadment so as to continue the suit. The court below dismissed the application on the ground that when there are only two partners and one partner dies by the statutory fiction under Section 42 (c) of the Indian Partnership Act 1932 the partnership gets dissolved and therefore a suit cannot be proceeded against. The court below relied on the decision of the Apex Court reported in **Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandra Nagpur (In both the Appeals) v. Seth Govindram Sugar Mills (In both the Appeals)** (AIR 1966 S.C 24). The Hon'ble Apex Court in that particular case was considering about the legal impact when

one of the partners dies. The Apex Court was not considering the question what will happen to the case which is already instituted. A reference to Section 47 of the Indian Partnership Act is also relevant for determining this question. Under Section 47 after the dissolution of a firm the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners continue notwithstanding the dissolution, so far as may be necessary to wind up the affair of the firm and to complete transactions begun but unfinished at the time of dissolution but not otherwise. Institution of a suit for recovery of the amount and on account of the death of one of the partners remains to be a transaction begun but unfinished. Therefore even in cases of that nature Section 47 enables the court to do so. These questions have been considered by various High Courts as well. In the decision reported in **J. Prasanna Chandrasekharan v. M/s. Mohan Steel Corporation** {AIR 1988 NOC 6 (Madras)} the Madras High Court held that "Civil P.C.(5 of 1908) O.30 R.1 and 4 suit by partnership firm cause title, Rule 1 enables to file suit in name of firm without disclosing names of partners in cause title. But that does not prohibit filing of suit with names of partners. Death of partner brings in dissolution of partnership but that does not affect already

instituted proceedings in the name of firm - held, application for amendment of cause title by substituting names of partners in place of deceased partner was properly allowed". In the decision reported in **Usha Beltron Ltd. v. Nand Kishore Parasramka** (AIR 2001 Cal.137) at para 52 the court held that if one of the two partners constituting a firm dies during the pendency of a suit instituted by it, it does not affect the maintainability of the suit. As early as in 1937 i.e **Agarwal Jorawarmal v. Kasam & others** {AIR 1937 Nag.314) it was held that in spite of its dissolution a firm continues to exist for the purpose of realization of its assets, by suit or otherwise. The Hon'ble Apex Court in the decision reported in **Upper India Cable Co. v. Bal Krishna** {AIR 1984 SC 1381} held that if a suit is instituted in the name of a firm and partners are impleaded as proper parties, in the event of death of a partner his legal representatives need not be impleaded. It has also to be stated that Order XXX Rule 4 CPC does not make any distinction between firms having only two partners and firms having more than two partners. The words "two or more persons may show that it is applicable to a partnership firm for two persons as well". So from the principles enunciated by the above decisions and in the light of Section 47 of the Partnership Act and Order XXX

Rule 4 CPC it is manifestly clear that the assets due to a firm for which a proceeding has already been initiated shall continue in spite of the factum of death of one of the two partners and therefore there is nothing wrong or illegal in impleading the other partner who is alive to continue the proceedings so as to have an end to the litigation. Therefore, the order under challenge is set aside and the impleading petition is allowed and the court below is directed to proceed with the trial of the suit in accordance with law. Civil Revision Petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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